

ILLINOIS POLLUTION CONTROL BOARD
April 1, 1982

IN THE MATTER OF:)
)
AMENDMENTS TO TITLE 35: ENVIRON-) R82-5
MENTAL PROTECTION; SUBTITLE C:)
WATER POLLUTION; CHAPTER I:)
POLLUTION CONTROL BOARD; PARTS 304)
and 307)

Proposal for Rulemaking

ORDER OF THE BOARD (by J.D. Dumelle):

On December 3, 1981 the Board adopted amendments to Chapter 3: Water Pollution, in docket R76-21 which included Rules 412 and 702, New Source Performance Standards and Mercury Discharges to Sewers, respectively. By Order of February 17, 1982 the Board denied a motion for reconsideration of those named rules which was filed by the Illinois Environmental Protection Agency (Agency) on January 6, 1982. Despite that denial, the February 17 Order indicated that the Board would review those rules and would propose their deletion or amendment as it deemed appropriate. The Board has now completed that review and finds that Rules 412 and 702 give rise to sufficient concerns such that further action concerning them is appropriate. For that reason the Board is hereby proposing the deletion of Rule 412 and the amendment of Rule 702 in substantial conformity with the Agency's comments in R76-21. The reasons for this proposal are discussed below.

In adopting Rule 412 the Board attempted to set up a workable mechanism for dealing with the interrelationship of federal New Source Performance Standards (NSPS) and Illinois effluent standards. The Board perceived a potential problem arising from the disparity between the federal system of mass discharge based limitations and the state system of concentration based limitations (see Board Opinion of September 24, 1981 in R76-21, pp. 13-14). At the time of adoption of that rule the Board was not fully aware of its shortcomings as detailed in the Agency's November 10, 1981 supplemental comments. These include the practical difficulty of implementing state standards during appeals of the NSPS and inequities between new and existing sources. Given the potential significance of these problems, which were barely touched on prior to the second notice period in R76-21, the Board finds that a more complete record should be developed on these issues at a minimum. Based upon the comments and the further review of the rule, the Board is no longer convinced that Rule 412 is appropriate. The Board, therefore, proposes its deletion.

Rule 702 was adopted based upon the Board's conclusion that mercury discharges should be limited as much as is reasonably possible due to the extreme environmental hazard mercury poses. Part of the overall strategy was to hold an indirect discharger to the 0.0005 mg/l standard if it failed to eliminate unnecessary uses of mercury, regardless of whether the publicly owned or regulated sewer system to which it discharged qualified for the looser 0.003 mg/l standard. This certainly would serve to minimize discharges. Again, however, based upon the Agency's supplemental comments and further review of the rule, the Board now questions whether this is reasonable due to the uncertainty an indirect discharger may face, and the risk he may be exposed to, in deciding whether he qualifies for the looser standard as well as the possible administrative burden upon the Agency. The Agency contends, in effect, that this procedure would necessarily give rise to an informal permitting system by them.

Therefore, the Board proposes to amend Rule 702 such that an indirect discharge would never be subject to a tighter standard than the sewer system or treatment works to which it discharges. However, the Board proposes to otherwise retain the exception for an indirect discharger such that he could qualify for the looser standard despite the fact that the associated direct discharger is held to the tighter standard.

The Board, despite acting as the proponent in this matter, notes that both the adopted rules and those proposed herein have shortcomings and that there may well be other, and better, mechanisms for addressing both the Agency's and the Board's concerns about NSPS and mercury. Therefore, hearings to be set in this matter will not necessarily be limited to the proposal herein. Alternative proposals are welcome.

Since Chapter 3 will almost certainly be in codified form prior to final action in this matter, the Board's proposal will be presented in that form. Under that format, old Rule 412 is Section 304.142 and old Rule 702 is Section 307.103.

The Board hereby proposes the following amendments to TITLE 35: ENVIRONMENTAL PROTECTION; SUBTITLE C: WATER POLLUTION; CHAPTER I: POLLUTION CONTROL BOARD; PARTS 304 AND 307 (deleted language is lined through; added language is underlined):

~~Section 304-142 New Source Standards Performance~~ deleted
The numerical effluent standards of this Part do not apply under the following circumstances:

- a) The discharge is authorized by an NPDES permit, and
- b) The facility from which the discharge results is subject to new source performance standards promulgated by USEPA pursuant to the Clean Water Act, and
- e) The NPDES permit contains a numerical effluent limitation based upon USEPA effluent guidelines and standards representing best

available demonstrated control technology for the constituent in question.

Source Note: 5 Ill. Reg. effective
codified 5 Ill. Reg.

Section 307.103 Mercury

a) Except as provided below, no person shall cause or allow the concentration of mercury in any discharge to a publicly owned or publicly regulated sewer system to exceed the following level, subject to the averaging rule contained in Section 304.104(a):

CONSTITUENT	STORET NUMBER	CONCENTRATION (mg/l)
Mercury	71900	0.0005

b) It shall be an exception to paragraph (a) if the discharge is to a publicly owned or publicly regulated sewer system which is required to meet a limitation less stringent than the 0.0005 mg/l mercury concentration in which case the discharge limitation shall be the same as that applicable to the publicly owned or publicly regulated sewer system to which it discharges.

c) b→ It shall be an exception to paragraph (a) if all the following conditions are met:

- 1) The discharger does not use mercury; or , the discharger uses mercury and this use cannot be eliminated; or, the discharger uses mercury only in chemical analysis or in laboratory or other equipment and takes reasonable care to avoid contamination of wastewater; and,
- 2) The discharge mercury concentration is less than 0.003 mg/l, as determined by application of the averaging rules of Section 304.104(a); and
- 3) The discharger is providing the best degree of treatment consistent with technological feasibility, economic reasonableness and sound engineering judgment. This may include no treatment for mercury; and
- 4) The discharger has an inspection and maintenance program likely to reduce or to prevent an increase in the level of mercury discharges.

d) e→ The discharge of wastes from medicinal or therapeutic use of mercury, exclusive of laboratory use, shall be exempt from the limitation of paragraph (a) of this Section if all the following conditions are met:

- 1) The total plant discharge is less than 227 g (one half pound) as Hg in any year;
- 2) The discharge is to a public sewer system; and
- 3) The discharge does not, alone or in conjunction with other sources, cause the effluent from the sewer system or treatment plant to exceed 0.0005 mg/l mercury.

e) ~~d)~~ No person shall cause or allow any discharge of mercury to a publicly owned or publicly regulated sewer system which, alone or in combination with other sources, causes a violation by the sewer treatment plant discharge of the water quality standard of Part 302 for mercury applicable in the receiving stream.

f) ~~e)~~ For purposes of permit issuance the Agency may consider application of the exception of paragraph (b) or (c) to determine compliance with this Section. The Agency may impose permit conditions necessary or required to assure continued application of the exception. When paragraph (b) or (c) applies, the Agency may impose an effluent limitation in the permit which allows discharge of a concentration of mercury greater than 0.0005 mg/l but not more than 0.003 mg/l.

Source Note: Filed with Secretary of State January 1, 1978;
amended 3 Ill. Reg. 45, page 101, November 3, 1978, effective
November 5, 1978; amended 5 Ill. Reg. effective
Codified

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 1st day of April, 1982 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board